

SECTION I – GENERAL COMPLIANCE
CHAPTER 5

BIDS & CONTRACTS/PURCHASING

Bids & Contracts

Effective April 17, 2000, *N.J.S.A.* 18A:18A-1 et seq. (Public School Contracts Law) was amended by P.L.1999, c.440. The associated rules were drafted and promulgated by the Division of Local Government Services, with consultation from the Commissioner of Education. A copy of the law along with additional materials on the revisions to the law and the associated rules can be found at www.state.nj.us/njded/pscl.

Auditor's Note: The Educational Facilities and Construction and Financing Act (EFCFA), P.L.2000 c.72 (C.18A:7G-5n) states: "The provisions of the "Public School Contracts Law", *N.J.S.* 18A:18A-1 et seq., shall be applicable to any school facilities project constructed by a district but shall not be applicable to projects constructed by the authority or a redevelopment entity pursuant to the provisions of this act."

Highlights of *N.J.S.A.* 18A:18A (Public School Contracts Law), amended by P.L. 1999, c.440:

N.J.S.A. 18A:18A-2 contains definitions for terms used throughout *N.J.S.A.* 18A:18A-1 et seq. and was amended under P.L. 1999, c.440. It includes as subsection (p) the term 'competitive contracting', which is defined as "the method described in sections 45 through 49 of P.L. 1999, c.440 (C.18A:18A-4.1 through C.18A:18A-4.5) of contracting for specialized goods and services in which formal proposals are solicited from vendors; formal proposals are evaluated by the purchasing agent or counsel or school business administrator; and the board of education awards a contract to a vendor or vendors from among the formal proposals received." Also, subsection (aa) defines the term 'concession' to exclude vending machines.

N.J.S.A. 18A:18A-3(a) was amended with P.L. 1999, c.440 to raise the bid threshold and require award by board resolution. In addition, the statute was amended to provide for an even higher threshold when there is a "Qualified Purchasing Agent" in the district.

"When the cost or price of any contract awarded by the purchasing agent in the aggregate does not exceed in a contract year the total sum of \$17,500, the contract may be awarded by a purchasing agent when so authorized by resolution of the board of education without public advertising for bids and bidding therefore, except that the board of education may adopt a resolution to set a lower threshold for the receipt of public bids or the solicitation of competitive quotations."

"If the purchasing agent is qualified pursuant to subsection b. of section 9 of P.L.1971, c.198 (C.40A:11-9), the board of education may establish that the bid threshold may be up to \$25,000. Such authorization may be granted for each contract or by a general delegation of the power to negotiate and award such contracts pursuant to this section."

N.J.S.A. 18A:18A-3(b) was amended with P.L.1999, c.440 to extend the base contract period.

"Any contract made pursuant to this section may be awarded for a period of 24 consecutive months, except that contracts for professional services pursuant to paragraph (1) of subsection (a) of *N.J.S.A.* 18A:18A-5 may be awarded for a period not exceeding 12 consecutive months."

N.J.S.A. 18A:18A-4 sets forth the requirement for advertising, and was amended to address the disqualification of a vendor:

"Every contract for the provision or performance of any goods or services, the cost of which in the aggregate exceeds the bid threshold, shall be awarded only by resolution of the board of

education to the lowest responsible bidder after public advertising for bids and bidding therefor, except as is provided otherwise in this chapter or specifically by any other law. The board of education may, by resolution approved by a majority of the board of education and subject to subsections (b) and (c) of this section, disqualify a bidder who would otherwise be determined to be the lowest responsible bidder, if the board of education finds that it has had prior negative experience with the bidder.”

N.J.S.A. 18A:18A-4.1 provides boards of education the ability to use competitive contracting in lieu of public bidding for the procurement of specialized goods and services above the bid threshold for the following purposes:

- proprietary computer software;
- hiring of a non-profit entity or not-for-profit entity under Title 15A;
- services performed by an energy services company;
- telecommunications transmission or switching services;
- specialized machinery or equipment of a technical nature;
- food services

N.J.S.A. 18A:18A-4.4 provides boards of education the authority to pass a resolution authorizing the use of competitive contracting. “In order to initiate competitive contracting, the board of education shall pass a resolution authorizing the use of competitive contracting each time specialized goods or services enumerated in section 45 of .L. 1999, c.440 are desired to be contracted.”

N.J.S.A. 18A:18A-5 contains exceptions to the requirement for advertising and was amended with P.L. 1999 c.440 to include the below exceptions; this section should be referenced by the auditor for more details on these and other changes.

- expenses for travel/conferences;
- support/maintenance of proprietary computer software/hardware;
- purchase of goods/services at rates set by Universal Service Fund – FCC;
- student funded and benefited projects, e.g. yearbooks, class rings, class gift;
- food services pursuant to procedures established by the New Jersey Department of Agriculture; and
- vending machines for food and drink.
- Goods/services for which the lowest of three quotes is at least 10% less than the state contract price (see subsection (e) for award requirements)

N.J.S.A. 18A:18A-7 addresses emergency contracts that exceed the bid threshold, and was amended by P.L. 1999 c.440 to require the person in charge of the facility where the emergency occurs to notify the purchasing agent in writing of the circumstances and the need to invoke such action.

N.J.S.A. 18A:18A-10 permits the use of state contracts, and is amended by P.L. 1999 c.440 to require a board resolution for authorization for a district to do so.

N.J.S.A. 18A:18A-15 addresses general specifications for goods/services and was amended by P.L. 1999 c.440 primarily in the following areas:

- establishes a new requirement for a prospective bidder to challenge bid specifications in writing no less than three business days prior to bid opening.
- subsection (c) expands the discrimination clause to include creed, color, ancestry, marital status, affectional or sexual orientation, etc.
- allows that goods/services purchased by funds from a bequest, legacy or gift that specifies a manufacturer or vendor may be treated as an exception to the bidding requirement.

N.J.S.A. 18A:18A-21 addresses the requirements for advertising bids, and is amended by P.L. 1999 c.440 to set forth requirements for notification of revisions or addenda to advertisements or bid documents.

N.J.S.A. 18A:18A-22 is substantially amended by P.L. 1999 c.440, and establishes a list of criteria as bases on which a board of education may reject all bids.

N.J.S.A. 18A:18A-37 describes the awarding of contracts below the bid threshold and was amended by P.L. 1999, c.440. Subsection (a) describes the requirements for awarding contracts below the bid threshold.

“For all contracts that in the aggregate are less than the bid threshold but 15 percent or more of that amount, and for those contracts that are for subject matter enumerated in subsection (a) of *N.J.S.A.* 18A:18A-5, except for paragraph (1) of that subsection concerning professional services and paragraph (3) of that subsection concerning work by employees of the board of education, the purchasing agent shall award the contract after soliciting at least two competitive quotations, if practicable.”

Subsection (c) describes the requirements for small purchases.

“If authorized by the board of education by resolution, all contracts that are in the aggregate less than 15 percent of the bid threshold may be awarded by the purchasing agent without soliciting competitive quotations.” This section should be referenced by the auditor for more details on these and other changes.

School districts must comply with *N.J.S.A.* 18A:18A-37 and 42.1 and 7 CFR. 210.16 when entering into School Food Service Management Company Contracts.

Pursuant to *N.J.S.A.* 18A:39-3, the threshold for bidding of transportation contracts is \$12,800 effective July 1, 1999. Implementation of P.L. 1999, c.440 did not amend or repeal 18A:18A:49.1 that states “the provisions of this chapter shall not apply to contracts for the transportation of pupils to and from school, which contracts are regulated by Chapter 39 of this Title.”

N.J.S.A. 18A:18A-42 was amended by P.L.1999 c.440 to allow contracts of less than 3 years to be extended that contain a provision for extensions of no more than one two-year or two one-year extensions, provided BOE adopts resolution complying with a set of conditions. Increase in extended contracts is limited to index rate percentages. No contract can be extended so that it runs more than a total of five consecutive years.

The following are basic categories of such extensions with the corresponding aggregate terms. The statute should be referenced for specific limitations and restrictions.

<u>ITEM</u>	<u>AGGREGATE TERMS (YEARS)</u>
(1) Fuel for Heating	3
(2) Fuel/Oil for Vehicles	3
(3) Thermal Energy (Approved by Board of Public Utilities)	40
(4) Removal of Snow and Ice	3
(5) Garbage Collection	3
(6) Data Processing Services	7
(7) Insurance	3
(8) Leasing of equipment in accordance with rules and regulations of the State Board of Education	5

(9) Sale and lease-back of textbooks and non-consumable instructional materials	5
(10) Voice, Data, Transmission and Switching Services	5
(12) Driver Education	3
(13) Goods and Services for the purpose of conserving energy	15
(14) Any single project for construction, reconstruction or rehabilitation of any public building for length of time authorized for completion of actual construction.	Length of Time Authorized
(15) Laundry Service	3
(16) Purchases under contract awarded by Division of Purchase and Property in Treasury	Term not to exceed term of Contract

N.J.S.A. 18A:18A-45 addresses manner and method of sale of personal property, and is amended by P.L. 1999, c.440 to require, in addition to the board resolution, a sealed bid or public auction process; it also provides that if the estimated value exceeds 15 percent of the bid threshold, it must be sold at public auction. The auditor should refer to this section for additional information and changes.

Review of Purchase Orders

As discussed in Section I, Chapter 8, “Year-End Procedures”, districts are required to perform a review of purchase orders outstanding at June 30th and categorize the orders into three categories: 1) those that represent orders for which the goods have been received or the services have been rendered at June 30th but that have not been paid (accounts payable); 2) those that represent orders which will be honored in the subsequent year within 60-90 days of year end; 3) all others. Orders in category 1 must be charged against the current year budget, the related encumbrances reversed, and a liability (accounts payable) established. Orders in category 2 will be rolled over into the next fiscal year and will be shown in the June 30th general fund balance sheet as a reserve for encumbrances. As a general rule, the orders in category 3 should be canceled. As documentation of the review, districts must provide the auditor with separate listings of the category 1 orders and category 2 orders for each governmental fund. The total of each category 1 list must agree with the June 30th balance in the general ledger balance sheet account for accounts payable of the applicable fund. The total of each category 2 list must agree with the June 30th balance in the general ledger balance sheet account for the reserve for encumbrances of the applicable fund. (Note: Additional entries are necessary for outstanding special revenue fund purchase orders as explained in Section I, Chapter 8. Also, for CAFR presentation, in the special revenue fund, the reserve for encumbrances is grouped with deferred revenue in the GAAP balance sheet.) Local school district auditors must review the lists and their related documentation and challenge the propriety of the district’s classifications. Particular attention must be given to the subsequent liquidation of the orders to determine if an audit adjustment is necessary for additional orders that should be canceled.

A purchase order represents a commitment against an appropriation. Purchase orders should not be issued without an underlying contract or actual order of goods or services. Blanket purchase orders should not be issued. The auditor’s review of orders for blanket purchase orders should not be limited to purchase orders outstanding at June 30th. The issuance of blanket purchase orders at any time during the year should be reported by the auditor as a finding and recommendation in the Auditors' Management Report.

Credit Cards

Neither boards of education nor district officials may use credit cards for the purchase of goods and services. Statutory requirements direct how boards of education may purchase goods and services and establishes the procedures to follow in paying for the purchase of goods and services. Purchases made by boards of education must comply with *N.J.S.A.* 18A:18A-1 et seq. as amended by P.L. 1999 c.440, the Public School Contracts Law for purchases on or after April 17, 2000. The payment of claims by a board of education must also comply with *N.J.S.A.* 18A:19-1 et seq., “Expenditure of Funds; Audit and Payment of Claims.” These regulations are intended to ensure that competitive bidding procedures are followed and certifications regarding the authenticity of claims are received. Pursuant to *N.J.S.A.* 18A:19-13 and *N.J.A.C.* 6A:23-2.9, a board of education may establish a petty cash fund on July 1st of each year, or as needed, for the purpose of making immediate payments of comparatively small amounts. Large purchases should be made through the contractual order system.